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August 14, 2024

Via CM/ECF

Hon. Loretta A. Preska

United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *Petersen Energía Inversora, S.A.U. v. Argentine Republic*, No. 15-cv-02739;
Eton Park Capital Management, L.P. v. Argentine Republic, No. 16-cv-8569

Your Honor:

I respectfully write to request a pre-motion conference regarding Plaintiffs' intended renewal of its motion to compel YPF S.A. ("YPF") to produce alter ego discovery in response to Plaintiffs' document subpoena.

On May 28, 2024, following letter briefing and an oral hearing, the Court ordered YPF to produce documents related to its potential alter ego relationship with the Argentine Republic. The Court limited the responsive time period to two years and instructed the parties to meet and confer on the scope of production.

In the ten weeks since the Court's order, Plaintiffs have met and conferred with YPF at least six times, with nothing material to show for it. For instance:

- To date, YPF has produced only 65 documents, many of which are publicly available SEC filings;¹
- YPF initially refused to search and produce electronically stored information ("ESI") *at all*, but agreed on June 7 to "consider" a list of ESI search terms;²
- On June 17, Plaintiffs proposed a list of 72 search terms and 49 custodians, even though YPF had not yet produced an organizational chart (which would not occur

¹ Declaration of Laura Harris ("Harris Decl.") ¶¶ 6, 8.

² Harris Decl. ¶ 4.

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until July 9, despite Plaintiffs' request to prioritize this item to assist its identification of relevant custodians);³

- While Plaintiffs agreed to *prioritize* 18 custodians in order to expedite production, YPF asserted on July 9 that 18 custodians was the maximum it would search, conditioning its agreement to produce *any* ESI on Plaintiffs' foregoing documents from the other 31 custodians (or anyone else) in total darkness;⁴
- YPF has continued to insist both that Plaintiffs' alter ego theory is a "quintessential fishing expedition" and Plaintiffs "have provided very little information about their alleged alter ego theory," wholly ignoring that the Court *already ordered YPF to produce discovery on the issue*,⁵ and
- YPF steadfastly refuses to commit to any timetable for production.⁶

On August 12, the purpose of YPF's foot-dragging became clear: it was simply buying time to prepare briefing seeking to enjoin Plaintiffs from enforcing the judgment against YPF on frivolous *res judicata* grounds, hoping to foreclose the production of alter ego discovery entirely. That is no doubt because it knows that fulsome discovery would reveal that its operations are indeed dictated by the Republic, particularly after the change in presidential administration late last year. This is not idle speculation. In a July 31 press conference, the governor of the Buenos Aires province, Alex Kicillof, criticized YPF's decision to change the location of a planned LNG project on the basis that it was dictated by the government, and stated explicitly that "[e]ven though YPF is a private company, the directors *are officials of Milei's government* and what we have observed is that they made decisions *ordered by the President*."⁷

While YPF now insists that it intends to comply with the Court's discovery order notwithstanding its effort to obtain an injunction that would prevent it from doing so, the facts say otherwise. YPF will not commit to any production timetable

³ Harris Decl., ¶¶ 5, 8, Ex. A.

⁴ Harris Decl., ¶¶ 7–8, Ex. B, Letter from W. Reilly to L. Harris dated July 9, 2024.

⁵ See Harris Decl., ¶ 8, Ex. B, Letter from W. Reilly to L. Harris dated July 9, 2024.

⁶ Harris Decl., ¶ 3.

⁷ Harris Decl., ¶ 11, Ex. C, Axel Kicillof held Milei responsible for YPF's decision to choose Río Negro over Buenos Aires for the GNL plant, LA NACIÓN, July 31, 2024 (emphasis added).

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yet seeks to accelerate consideration of its *res judicata* argument through the improper device of an order to show cause, all in hopes of circumventing the discovery the Court has ordered before Plaintiffs receive any meaningful discovery.

At this juncture, Plaintiffs require the Court's assistance to enforce its May 28 discovery order on two principal issues of disagreement (thus far).

First, while YPF finally agreed on August 12 to produce documents from 18 custodians, it still refuses to commit to any schedule for completion of the production. Plaintiffs request that the Court order YPF to complete that production by October 18 through rolling productions every three weeks.

Second, YPF refuses to search for ESI other than company email, such as company-related communications through applications such as Gmail, Teams, WhatsApp, and Slack. YPF's document production in the underlying litigation, however, demonstrated that its employees regularly communicate about company matters using their personal accounts.⁸ Moreover, given the widespread use of WhatsApp in Argentina, which as of 2023 is the preferred social messaging application for Argentine internet users, there is no basis to ignore a significant source of potentially relevant communications.⁹ YPF's objections—including that chat collection would require collections from former employees and consent purportedly required by the Argentine Constitution—are baseless. As an initial matter, YPF has not even agreed to these collections for *current* employees, and its purported consent requirements do not rise to the level of criminal liability required to excuse production (and in any event were insufficient to preclude production in merits discovery). See *Laydon v. Mizuho Bank, Ltd.*, 183 F. Supp. 3d 409, 425 (S.D.N.Y. 2016) (requiring disclosure where resisting parties were “unable to cite a single instance in which a UK enforcement action was taken against an entity for violating [foreign law] by complying with discovery demands in the United States”).

Plaintiffs respectfully request the Court order YPF to fulfill its production obligations by October 18 (with rolling productions every three weeks), including through the search and production of all custodial ESI, including chat applications.

⁸ See Harris Decl., Ex. D, YPFPT00047591; Ex. E, YPFPT00035697 (internal emails showing use of personal Gmail accounts for YPF work communications).

⁹ Harris Decl., Ex. F, Percentage of users on selected social networks in Argentina in 2023, STATISTA, Oct. 15, 2023 (93% of Argentine internet users use WhatsApp).

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Respectfully,

/s/ Randy M. Mastro
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